# INDEX


| | PAGE |
|---|---|
| SUMMARY OF APPELLEES' ARGUMENT (JURISDICTION OF APPEAL | 1-3 |
| THE QUESTIONS PRESENTED ARE OF SUBSTANTIAL NATIONAL IMPORTANCE | 3-4 |
| CONCLUSION | 5 |


## TABLE OF AUTHORITIES

### *Cases*


| | |
|---|---|
| Burham Van Service, et al. v. Cayce R. Pentecost, et al., 382 U.S. 106 (1965) | 1, 2 |
| Louisville & Nashville R. Co. v. Public Service Comm'n of Tenn., 249 F. Supp. 894 (M.D. Tenn. 1966) | 3 |


### *Statutes*


| | |
|---|---|
| Tennessee Code Annotated, Chapter 9, Title 67 | 3 |
| 67-906 B (2) | 2 |
| U.S. Const. Art. I, § 8 | 2 |

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1966

## No. 942

ALTERMAN TRANSPORT LINES, INC., ET AL.,
*Appellants,*

v.

PUBLIC SERVICE COMMISSION OF TENNESSEE, ET AL.,
*Appellees.*

## APPELLANTS' OPPOSITION TO MOTION TO DISMISS

### Summary of Appellees' Argument (Jurisdiction of Appeal)

Appellees base their Motion to Dismiss on the ground that the constitutional issues in this case do not raise a federal question substantial enough to uphold the lower court's decision to invoke three-judge court jurisdiction. In this regard, they rely on a decision of the Tennessee Court of Appeals which, on appeal to this Court, was summarily dismissed for lack of a substantial federal question (See *Burham Van Service, et al. v. Cayce R. Pentecost, et al.*, 382 U.S. 106 (1965). The decision of the Tennessee Court of Appeals is set out in Appendix two of Appellees' Motion to Dismiss, herein). Appellees, however, incorrectly state in their Motion that the *Burham* case contains

the "same factual and constitutional issues" as the instant case. A comparison of the two cases clearly indicates that there are at least three entirely different and new arguments raised in Appellants' Bill of Complaint which were not presented or mentioned in the *Burham* case (See for example, the argument summarized in footnote two of Jurisdictional Statement). The new contentions present several definite and uncontroverted bases for sustaining three-judge court jurisdiction; therefore, it is unnecessary at this time to examine the *Burham* decision.

A most important factual distinction between the two cases illustrates one of the bases for sustaining the lower court's decision to invoke three-judge court jurisdiction. In the instant case, many of Appellants, in accordance with the forms and instructions sent to them by Defendants biannually from 1958 to the present, have literally complied with the requirements of *Tennessee Code Annotated,* Title 67, Section 906 B (2) and have reported their total miles travelled in Tennessee computed separately as to Counties, Municipalities, and taxing districts. The carriers in the *Burham* case found this reporting requirement to be so burdensome that they did not even attempt same. Consequently, the court in *Burham* refused to consider whether or not *T.C.A.* 67-906 B (2) unduly burdened interstate commerce in violation of Article I, Section 8 of the Constitution of the United States. What is important for present purposes, however, is that the State Court conceded that if the strict compliance which exists in the instant case were present, an undue burden on interstate commerce would be demonstrated (See the Court's Opinion set out in Appellees' Motion, at pages 22-25). This burden (and the resulting constitutional violation) is of itself sufficient basis for upholding the lower Court's decision to invoke three-judge court jurisdiction and to render its

final decree as a three-judge court. Therefore, the three-judge court having been properly convened, the jurisdiction of this Court over this appeal must be sustained.

## The Questions Presented Are Of Substantial National Importance

**Appellees Have Admittedly Applied Ad Valorem Taxes Against Interstate Common Carriers in Violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Consequently, It is the Duty of a United States District Court to Exercise Its Jurisdiction Over This Matter Without Regard to the Value of the Matter in Controversy.**

Appellants demonstrated below that Appellees have taxed their property for Ad Valorem purposes at approximately 100% of actual value, while property locally assessed in Tennessee and similarly situated under the laws and constitution of Tennessee has been assessed at no more than 50% of actual value. The lower Court held that this discrimination in assessment ratios raised a substantial federal question under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. (See Lower Court Opinion at page 6a, Appendix One of Jurisdictional Statement). Moreover, when this *identical* practice was considered on its merits, the federal District Court for Tennessee found a definite Equal Protection violation (See *Louisville & Nashville R. Co. v. Public Service Comm'n of Tenn.*, 249 F. Supp. 894 (M.D. Tenn., 1966)). It is so clear that *T.C.A.* 67-901-931 is discriminatorily applied against Appellants that Appellees did not dispute this point below, and before this Court concede that "there may be . . . substantial federal questions involved in the case" (See page 10 of their Motion).

Despite its conclusion that interstate commerce was taxed in a discriminatory and unequal manner the lower

Court refused to invoke federal jurisdiction on the grounds of insufficient "amount in controversy." The Court's requiring and method of computing a minimum "amount in controversy", coupled with its correct holding that the state courts of Tennessee do not provide an adequate remedy to redress the conceded discrimination, leave Appellants no forum in which to seek relief from an admittedly discriminatory tax. Under this decision, the only restriction on a State's discriminatory taxation of interstate commerce is its ingenuity in manipulating the form in which taxes are collected. In Tennessee, ninety-five counties and approximately three hundred municipalities collect state assessed ad valorem taxes from Appellants, and each of these subdivisions is now free to discriminate against each of Appellants in an amount up to $9,999.00. As the *total liability within the State of Tennessee* for each of Appellants, with a few exceptions, far exceeds the $10,000.00 requirement for federal jurisdiction, the denial of jurisdiction on the basis of "insufficient amount in controversy" completely subverts Congress's objectives in specifying a jurisdictional minimum. Equitably, a just computation of this amount is an impossibility due to a state's ability to divide its ad valorem taxes among countless subdivisions. In addition, there is no legal basis for requiring same under the facts of the instant case (See Jurisdictional Statement at pages 16-31). It is respectfully submitted that the questions presented herein are of substantial national importance vitally affecting the free flow of commerce among the states and the functioning of the federal courts; and that, for the reasons set out in the Jurisdictional Statement, the lower Court's decision should be summarily reversed.

## Conclusion

For these reasons it is respectfully submitted that the Motion to Dismiss be denied and that the Court either reverse the decision below or else note probable jurisdiction of this appeal.

DAVID S. CORDISH,

Cordish & Cordish,
Baltimore, Maryland,

J. G. LACKEY, JR.,

Stephenson, Lackey & Holman,
Nashville, Tennessee,

Attorneys for Appellants.